Decision **PROPOSED DECISION OF ALJ KENNEY**
(Mailed December 29, 2015)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) for Commission Approval under Public Utilities Code Section 851 of an Irrevocable License for Use of Utility Support Structures and Equipment Sites to ExteNet Systems (California) LLC.	Application 15-07-012 (Filed July 7, 2015)

DECISION APPROVING A LICENSE AGREEMENT FOR THE USE OF UTILITY PROPERTY PURSUANT TO PUBLIC UTILITIES CODE SECTION 851

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DECISION APPROVING A LICENSE AGREEMENT FOR THE USE OF UTILITY PROPERTY PURSUANT TO PUBLIC UTILITIES CODE SECTION 851

1. Summary

This decision approves Application 15-07-012 wherein Pacific Gas and Electric Company (PG&E) requests Commission authorization pursuant to Public Utilities Code Section 851 to enter into an irrevocable license agreement ("License Agreement") with ExteNet Systems (California) LLC ("ExteNet"). Under the License Agreement, ExteNet will construct a fiber optic communication system ("system") on PG&E's property and transfer bare legal title of the system to PG&E. ExteNet will receive a right to use part of the system, and ExteNet will pay at least $207,000 annually to PG&E for the right to use the system. The License Agreement also provides PG&E with dedicated capacity on the system for PG&E's own use, with no upfront capital costs to PG&E. The ongoing maintenance expenses for the system will be shared by PG&E and ExteNet based on the amount of system capacity dedicated to each entity. ExteNet will be solely responsible for payment of franchise fees and property taxes.

The License Agreement protects safety by requiring all construction, operation, and maintenance of the system to comply with applicable safety requirements, including the Commission's General Orders 95 and 128.

This proceeding is closed.

2. Procedural Background

Pacific Gas and Electric Company (PG&E) filed Application (A.) 15-07-012 on July 7, 2015. Notice of A.15-07-012 appeared in the Commission's Daily Calendar on July 13, 2015. There were no protests or responses.

In Resolution ALJ 176-3360, issued on July 23, 2015, the Commission preliminarily determined pursuant to Rule 7.1 of the Commission's Rules of

Practice and Procedure ("Rules") that the category for this proceeding is ratesetting and that a hearing is needed.

PG&E filed a prehearing conference ("PHC") statement on September 9, 2015. The PHC was held September 15, 2015, and the *Assigned Commissioner's Ruling and Scoping Memo* ("Scoping Memo") was issued on October 5, 2015. The Scoping Memo affirmed that the category for this proceeding is ratesetting. However, the Scoping Memo determined pursuant to Rule 7.3(a) that a hearing is not needed in this proceeding. This changed determination on the need for a hearing is affirmed by today's decision pursuant to Rule 7.5.

In accordance with rulings issued by the assigned Administrative Law Judge (ALJ) on August 28 and September 18, 2015, PG&E provided specified information in its PHC statement and in a document filed on October 16, 2015.

3. Summary of A.15-07-012

In A.15-07-012, PG&E requests an order from the Commission that:

- Approves pursuant to Public Utilities Code Section 851 the *Master [Irrevocable Right to Use] Agreement for Optical Fiber Installations Between Pacific Gas and Electric Company and ExteNet Systems (California) LLC* that is appended to A.15-07-012 ("License Agreement").
- Approves the installation and use of a fiber optic communication system on or in PG&E's utility facilities by ExteNet Systems (California) LLC ("ExteNet") under the License Agreement.
- Finds that the terms of the License Agreement are reasonable.
- Approves the ratemaking treatment requested by PG&E in A.15-07-012.

4. The Parties to the License Agreement

The parties to the License Agreement are PG&E and ExteNet. Both are public utilities regulated by the California Public Utilities Commission

("Commission"). PG&E provides electric and gas services to the public. To this end, PG&E owns and operates utility facilities, buildings, and structures, including an internal telecommunications system to support the provision of electric and gas services to the public.

ExteNet is authorized to provide full facilities-based local exchange and interexchange telecommunications services in California pursuant to a certificate of public convenience and necessity ("CPCN") issued by the Commission in Decision (D.) 06-04-063.[1]

5. Summary of the License Agreement

Under the License Agreement, ExteNet will install a fiber optic communication system ("System")[2] on PG&E's facilities and property, but only on routes and at locations approved by PG&E. PG&E will take bare legal title to the System and give ExteNet an irrevocable right[3] to use some of the optical fibers. Twenty four (24) optical fibers within a cable installed under the License Agreement will be reserved for PG&E's use.

The License Agreement includes the following terms and conditions:

Permitted Uses and Affiliate Transactions. PG&E may use its PG&E Fibers[4] for any lawful purpose, including the sale of telecommunications

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[1] ExteNet was formerly known as ClearLinx Network Corporation.

[2] The License Agreement at Section 1.50 defines "System" to mean "all of the Cable, including the fiber optic strands therein, Cable Accessories, Equipment Sites, Equipment Stations, PG&E Facilities, System Electronics, Building Entries and other improvements forming a part of the fiber optic network constructed or installed pursuant to the terms of this Agreement."

[3] The License Agreement at Section 1.30 defines "irrevocable license" to mean "the nonexclusive and nonpossessory irrevocable right to exercise certain rights granted under the terms of this Agreement, which irrevocable license does not include a conveyance of any interest in real property."

[4] The License Agreement at Section 1.38 defines "PG&E Fibers" to mean "the number of optical fibers in the Cable, as specified in each Route License Acknowledgment, along the entirety of

services to the public. The License Agreement also provides PG&E's affiliates with unrestricted use of PG&E Fibers, except that any use of PG&E Fibers by an affiliate that is primarily engaged in the business of providing telecommunication services must be at arms-length and comply with applicable regulations. In addition, PG&E may assign some or all of its rights under the agreement to a domestic affiliate, provided that such assignment shall not relieve PG&E of any of its obligations under the agreement.

No Property or Possessory Interest. The License Agreement does not confer to ExteNet any property interest in PG&E's facilities and rights-of-way.

Term. The term of the License Agreement is 20 years. ExteNet has the option to extend the agreement for two terms of five (5) years each.

Quit and Surrender. At the expiration of the License Agreement, PG&E may elect the following for each cable route, equipment site, and building route: (1) require ExteNet to remove all of the System and restore PG&E's facilities and rights-of-way to their original condition, all at ExteNet's sole cost; (2) remove the System itself at ExteNet's sole cost; or (3) keep the System in place, at which time the title will pass to PG&E.

Minimum Annual Fee. ExteNet will pay a minimum annual fee of $207,000 beginning in 2015. This fee will escalate 3.5% annually.

Monthly Fee. ExteNet will pay a monthly fee equal to the sum of the (a) Active Building Lateral Fee of $258.75 for each active lateral, and (b) Distance Fee of $1,547.33 per cable mile. If the monthly fee over 12 calendar months is less

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each Developed System Segment that PG&E retains for the purposes and on the terms described in this Agreement."

than the minimum annual fee, the latter will apply. The monthly fee will begin in 2015 and escalate 3.5% annually.

Annual Site License Fee. ExteNet will pay an annual license fee for use of Equipment Sites. The annual fee will be at the market rate for the space used at each site, and will be established on a site-by-site basis. Once in place, the fee for a particular site will escalate 3.5% annually.

Other Fees, Charges, and Reimbursements. The License Agreement includes a number of other fees and charges that ExteNet will pay to PG&E when specified circumstances occur. In general, ExteNet will pay for all costs incurred to design and construct the System, including costs incurred by PG&E. Once the System is built and operating, ongoing costs will be shared between PG&E and ExteNet in proportion to the System capacity that is assigned to each entity. ExteNet will be solely responsible for payment of franchise fees and property taxes associated with the System.

Safety. The License Agreement requires ExteNet to design, construct, and operate the System in compliance with (1) PG&E's engineering standards and safety requirements in Exhibits I and J of the agreement; (2) electrical safety codes; and (3) all other applicable laws, ordinances, codes, regulations, and government approvals, including the Commission's General Orders 95 and 128.

At ExteNet's expense, PG&E will review any proposed modifications to PG&E's facilities and perform structural analysis and pole-loading calculations. PG&E will also design any rearrangements necessary to accommodate the installation of the System on PG&E's facilities. PG&E will have sole authority to approve System installations with respect to impacts on PG&E's facilities and rights-of-way. PG&E will also have the authority to stop any work or equipment functions for reasons related to potential health hazards, safety concerns, or potential disruption to PG&E's transmission and distribution systems.

Maintenance. PG&E and ExteNet must keep the System and rights-of-way in good working order and a safe condition at all times, in conformity with all applicable laws and regulations. PG&E will be responsible for maintaining the System up to the Point of Interface.[5] ExteNet will be responsible for maintaining the System beyond the Point of Interface. PG&E and ExteNet will be proportionally responsible for maintenance costs based on the proportion of fibers each owns within a cable.[6] ExteNet will reimburse PG&E for maintenance and restoration costs on a time and material basis, plus 35%.

PG&E's obligation to maintain the System will be subordinate to, and shall not conflict with, PG&E's use and operation of its utility facilities.

Reservation of Certain PG&E Rights. PG&E reserves for itself the right to (1) use its property and rights-of-way, or any portion thereof, for any purpose that PG&E may find necessary, and (2) enter upon or into any PG&E property and rights-of-way at any time for any purpose. These rights may be exercised by PG&E without notice to, or consent from, ExteNet, and without payment of any compensation to ExteNet.

6. Benefits of the License Agreement

The License Agreement will provide PG&E with the following benefits: (1) bare legal title to the fiber optic communication system installed by ExteNet under the agreement; (2) dedicated capacity on the system for PG&E's own use;

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[5] The License Agreement at Section 1.36 defines "Point of Interface" to mean "a point, usually a splice point, at which the PG&E Fiber physically diverges from the [ExteNet] Fiber.

[6] We interpret the Lease Agreement as dividing maintenance costs between PG&E and ExteNet based on the proportion of each entity's equitable title in the fibers within a cable, and not the proportion of each entity's bare legal title in the fibers.

and (3) revenue from ExteNet's use of the system. PG&E intends to use its dedicated capacity on the system to support its electric and gas monitoring and control systems, and to upgrade PG&E's internal voice and data network.

For ExteNet, the benefit of the License Agreement is that it will enable ExteNet to install a new fiber optic communication system using PG&E's facilities and rights-of-way. Part of the new system will be dedicated for use by PG&E, and the remainder for use by ExteNet. ExteNet may use its part for any lawful purpose that is not in violation of the License Agreement, including the sale of telecommunications services to other carriers and the public.

7. Discussion

7.1. Public Utilities Code Section 851

Public Utilities Code Section 851 (hereafter, "§ 851") provides that no public utility shall sell lease, mortgage, or otherwise encumber any of its property that is necessary or useful in the performance of its duties to the public, without first having secured from the Commission an order authorizing it to do so. Section 851 applies to A.15-07-012 because the application requests approval of a license agreement that would encumber utility property.

The primary question for the Commission in § 851 proceedings is whether the proposed transaction is adverse to the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's provision of service to the public.[7] In reviewing a § 851 application, the Commission may take such action, as a condition of approval, as the public interest may require.[8]

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[7] D.00-07-010, at 6.

[8] D.3320, 10 CRRC 56, 63.

We find that the License Agreement is not adverse to the public interest. ExteNet's installation and use of the fiber optic communication system will not interfere with PG&E's use of its property or with PG&E's provision of service to the public. There will be no adverse effect on safety or reliability for the reasons described in Sections 7.2 and 7.3 of today's decision.

We find that the License Agreement will serve the public interest by enabling PG&E's property to be used for other productive purposes. In this case, the other productive purpose is the installation of a fiber optic communication system. PG&E will use the system capacity it obtains under the License Agreement to support its electric and gas monitoring and control systems, and to upgrade PG&E's internal voice and data network. PG&E will also receive revenues for ExteNet's use of the system. ExteNet will use the system capacity it obtains under the License Agreement to support and expand the telecommunications services it offers to the public.

7.2. Safety

Pub. Util. Code § 451 requires every public utility to furnish and maintain adequate service, instrumentalities, equipment, and facilities to ensure the safety of its employees, customers, and the public.

We find that the License Agreement will protect the safety of workers, customers, and the public. All facilities will be installed, operated, and maintained in accordance with (i) General Order (GO) 95 and GO 128; (ii) applicable local, state, and federal safety regulations, including California Division of Occupational Safety and Health Title 8; and (iii) PG&E's safety standards and practices. To ensure safety, PG&E may access and inspect construction in progress.[9]

7.3. Reliability

We find that the License Agreement will not adversely affect the reliability of PG&E's utility-related facilities and operations. Section 3.10 of the agreement provides PG&E with authority to operate its facilities any way that PG&E deems necessary to ensure the safety and reliability of utility operations. Section 6.3(b)(i) provides PG&E with authority to reject installations proposed by ExteNet that would have an adverse effect on PG&E's facilities and rights-of-way. Section 13.1 vests PG&E with authority to relocate its electric utility facilities. And Section 8.3(a) obligates PG&E to place the maintenance and repair of its utility facilities ahead of the maintenance and repair of facilities installed under the License Agreement.[10]

7.4. Affiliate Transactions

The License Agreement contains provisions that (1) provide PG&E's affiliates with unrestricted use of PG&E Fibers, and (2) allow PG&E to assign some or all of its rights under the agreement to a domestic affiliate. PG&E does not anticipate any such use or assignments.[11]

Today's decision does not authorize any transactions between PG&E and its affiliates. Any transactions between PG&E and its affiliates that occur under the License Agreement shall comply with the applicable statutes (e.g., § 851) and

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9 License Agreement, Sections 7.2, 7.10, 8.1, 8.3, and Attachments I and J. (*See* also PG&E's Response filed on October 16, 2015, at 11.)

10 PG&E Response filed on October 16, 2015, at 13 – 14.

11 PG&E Response filed on October 16, 2015, at 15 – 17.

regulations (e.g., the Commission's affiliate transaction rules)[12] in effect at that time.

7.5. Right-of-Way Rules

The License Agreement is subject to the Commission's Right-of-Way ("ROW") Rules set forth in Decision (D.) 98-10-058, as modified by subsequent decisions.[13] The ROW Rules provide competitive local exchange carriers (CLECs) and cable television (CATV) corporations with non-discriminatory access to PG&E's utility infrastructure and rights-of-way. The following provisions in the ROW Rules require PG&E to offer the terms and conditions in the ExteNet License Agreement to "similarly situated" CLECs and CATV corporations:

> A utility may not charge a telecommunications carrier or cable TV company a higher rate for access to its rights-of-way and support structures than it would charge a **similarly situated** cable television corporation for access to the same rights of way and support structures. (D.98-10-058, Appendix A, Section VI.B.1.c. Emphasis added.)
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> A utility entering into contracts with telecommunications carriers or cable TV companies for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other **similarly situated** telecommunications carriers or cable TV companies. (D.98-10-058, Appendix A, Section VI.C.2. Emphasis added.)

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[12] The Commission's affiliate transaction rules are set forth in D.97-12-088, as modified by subsequent decisions.

[13] PG&E Response filed on October 16, 2015, at 1 – 2.

As PG&E notes in its comments on the proposed decision,[14] when the Commission adopted the ROW Rules in D.98-10-058, the Commission recognized that the determination of "similarly situated" will depend on the circumstances of each situation:

> It is unrealistic to expect that all ROW access agreements will be uniform with respect to prices, terms, or conditions. Differences are acceptable as long as they are justified by the particular circumstances of each situation, and do not merely reflect anticompetitive discrimination among **similarly situated** carriers. (D.98-10-058, Section II.B. Emphasis added.)

7.6. Ratemaking

All revenues and expenses associated with ExteNet's use of PG&E's electric transmission property are subject to the Federal Energy Regulatory Commission's (FERC) jurisdiction and ratemaking practices. All revenues and expenses associated with ExteNet's use of PG&E's electric distribution property are subject to the Commission's jurisdiction and ratemaking practices.

In accordance with our ratemaking practices, all revenues that PG&E receives for ExteNet's use of PG&E's electric distribution property shall be treated as Electric Other Operating Revenue. The record of this proceeding indicates that the revenues PG&E receives under the License Agreement for ExteNet's use of electric distribution property will exceed PG&E's associated costs for the next several years.[15] Under our ratemaking practices, this "profit" will benefit PG&E's customers by reducing PG&E's revenue requirement

[14] PG&E Comments filed on January 19, 2016, at 3.

[15] PG&E Response filed on October 16, 2015, at 3 – 6.

recovered in rates. However, there is no assurance that PG&E's revenues will always exceed its costs over the 20 to 30 year term of the License Agreement.[16]

Today's decision does not authorize PG&E to recover in rates any monetary losses that it might incur under the License Agreement in future years. The Commission may decide the appropriate ratemaking treatment of such losses if and when such losses occur.[17]

PG&E will have the burden of demonstrating in future general rate case proceedings (or other appropriate proceedings) that all unreimbursed costs incurred by PG&E under the License Agreement which are subject to the Commission's jurisdiction are reasonable and may be recovered in rates, either directly or as an offset to the revenues that PG&E receives under the agreement.

7.7. California Environmental Quality Act

The California Environmental Quality Act (CEQA)[18] requires a California government agency approving a discretionary project to consider the environmental impacts of its decisions.[19] CEQA defines a "project" as an activity that "may cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment," and either (a) is directly undertaken by a public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from a public agency, or

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[16] Much of the revenue that PG&E will receive under the License Agreement will increase at a fixed annual rate of 3.5%. However, the License Agreement does not (and cannot) limit future increases in PG&E's cost-of-ownership for the utility property used by ExteNet.

[17] Potential PG&E losses could be compounded if PG&E must offer the loss-making terms and conditions in the License Agreement to similarly situated entities pursuant to the ROW Rules discussed previously.

[18] CEQA is codified in Public Resources Code Section (Pub. Res. Code §) 21000 et seq.

[19] Pub. Res. Code § 21080.

(c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.[20]

Today's decision does not approve any construction projects because no specific projects are identified in A.15-07-012 or the License Agreement. Consequently, our approval of A.15-07-012 does not have any potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Therefore, our approval of A.15-07-012 is exempt from CEQA because it is not a "project" as defined by Pub. Res. Code § 21065.

PG&E and ExteNet must comply with CEQA requirements before constructing facilities pursuant to the License Agreement. To this end, ExteNet shall follow the procedures set forth in D.06-04-063. Under these procedures, ExteNet must submit specified information to the Commission's Energy Division (ED) regarding ExteNet's planned construction projects and any claimed CEQA exemptions for these projects. ED then reviews the information submitted by ExteNet and determines whether the claimed CEQA exemptions apply. Within 21 days of ExteNet's submittal of all required information, ED must either:

- Issue a Notice to Proceed with construction and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
- Issue a letter of denial explaining the specific reasons that the claimed CEQA exemptions do not apply to the project.

If ED determines that the claimed CEQA exemptions do not apply, ExteNet must either redesign the project and reapply for a determination that the CEQA

[20] Pub. Res. Code § 21065.

exemptions apply, or file a formal application with the Commission and undergo CEQA review for the project before commencing construction.[21]

Today's decision is consistent with the License Agreement, which requires ExteNet to secure all necessary government approvals, and thus fulfill CEQA requirements, before beginning construction.[22]

Importantly, today's decision does not provide ExteNet any construction authority beyond what is authorized by its CPCN. ExteNet's authority to construct facilities is conditioned by its CPCN, and those CPCN conditions apply to any construction conducted by ExteNet pursuant to the License Agreement.

7.8. Conclusion

For all of the preceding reasons, we conclude that it is in the public interest to grant A.15-07-012 pursuant to Pub. Util. Code § 851, effective immediately.

8. Comments on the Proposed Decision

The proposed decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311, and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on January 19, 2016, by PG&E.

In response to PG&E's comments on the proposed decision, the final decision incorporates the following substantive revisions:

- Sections 1 and 5 of today's decision are revised to state that under the License Agreement, ExteNet will be solely responsible for payment of the franchise fees and property taxes associated with the System.
- Section 5 is revised to state that the annual and monthly fees established by the License Agreement begin in 2015.

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[21] D.06-04-063, at 3 – 8 and Ordering Paragraphs 2 - 6.

[22] A.15-07-012, at 8; and License Agreement, Section 7.4.

- Section 7 and Conclusion of Law 5 are expanded to note that PG&E's obligation under the ROW Rules to offer the terms and conditions in the ExteNet License agreement to similarly situated CATV corporations and CLECs will depend on the particular circumstances of each situation.

We decline to adopt PG&E's request in its comments on the proposed decision to reverse two rulings issued by the assigned ALJ. In the first ruling issued on November 18, 2015, the assigned ALJ denied PG&E's motion dated July 7, 2015, to file the ExteNet License Agreement under seal. In the second ruling issued on January 5, 2016, the assigned ALJ granted in part and denied in part PG&E's motion dated October 16, 2015, to file under seal certain information contained in PG&E's concurrently filed response to the ALJ ruling issued on September 18, 2015.

We decline to reverse the ALJ rulings for the following reasons. First, PG&E's request to reverse the ALJ rulings is outside the proper scope of comments on the proposed decision. Pursuant to Rule 14.3(c), comments must focus on factual, legal, or technical errors in the proposed decision. Comments that fail to do so will be accorded no weight. The fact that the proposed decision did not mention, address, or reverse two ALJ rulings regarding PG&E's motions to file under seal does not constitute an error in the proposed decision.

Second, our long-standing policy is to discourage appeals of ALJ rulings.[23] Our policy avoids piecemeal litigation, prevents vexatious interference with the Commission's regulatory functions, and helps the Commission complete its proceedings within the statutory time periods. PG&E has not shown extraordinary circumstances that warrant an exception to our policy.

[23] D.08-04-023 at 7 and 11, and D.06-05-024 at 8.

Third, PG&E's request to reverse the two ALJ rulings is largely moot. As required by the two ALJ rulings, the document and information which PG&E claims are confidential have been filed at the Commission, without being placed under seal. As a result, the material at issue has been disclosed to the public.

Finally, PG&E's comments on the proposed decision raise the same legal arguments that were addressed by the ALJ rulings issued on November 18, 2015 and January 5, 2016. We conclude that these rulings are legally sound and reach the correct result. Accordingly, today's decision affirms these rulings.

9. Assignment of the Proceeding

Liane M. Randolph is the assigned Commissioner for this proceeding and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. The License Agreement between PG&E and ExteNet will not interfere with PG&E's use of its utility property or PG&E's provision of utility services to the public.

2. The License Agreement will not adversely affect worker safety, public safety, or the reliability of PG&E's public utility facilities and operations.

3. The License Agreement enables PG&E's property to be used for other productive purposes, in this case, a fiber optic communication system.

4. The benefits that PG&E will receive under the License Agreement include: (i) bare legal title to the fiber optic communication system installed by ExteNet under the License Agreement, (ii) the right to use part of the system's capacity for PG&E's own purposes, and (iii) revenue from ExteNet's irrevocable right to use the system capacity that is not dedicated to PG&E's use.

5. PG&E will use the fiber optic capacity it obtains under the License Agreement to support its electric and gas monitoring and control systems, and to upgrade PG&E's internal voice and data network.

6. The revenue that PG&E receives under the License Agreement will initially exceed PG&E's associated costs. However, there is no assurance that PG&E's revenue will always exceed its costs.

7. The License Agreement contains provisions that (i) provide PG&E's affiliates with unrestricted use of PG&E Fibers, and (ii) allow PG&E to assign some or all of its rights under the agreement to a domestic affiliate.

8. No specific construction projects are identified in A.15-07-012 or the License Agreement.

9. The Commission's approval of A.15-07-012 will not cause either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment.

10. In Resolution ALJ 176-3360, dated July 23, 2015, the Commission preliminarily determined that a hearing was needed in this proceeding.

11. There were no requests for an evidentiary hearing.

12. There are no disputed factual issues.

Conclusions of Law

1. The License Agreement is not adverse to the public interest.

2. The License agreement serves the public interest by enabling PG&E's property to be used for other productive purposes without interfering with PG&E's utility operations or PG&E's provision of services to the public.

3. The License Agreement should be approved pursuant to Pub. Util. Code § 851.

4. Today's decision should not authorize any transactions between PG&E and its affiliates. Any transactions between PG&E and its affiliates that occur pursuant to the License Agreement should comply with the applicable statutes and Commission regulations in effect at that time.

5. The License Agreement is subject to the ROW Rules adopted by D.98-10-058, as modified by subsequent decisions. The ROW Rules require PG&E to offer the terms and conditions in the License Agreement to CLECs and CATV corporations that are similarly situated to ExteNet. The determination of "similarly situated" depends on the particular circumstances of each situation.

6. PG&E's revenues and expenses associated with ExteNet's use of PG&E's electric transmission property are subject to the FERC's jurisdiction and ratemaking practices.

7. PG&E's revenues and expenses associated with ExteNet's use of PG&E's electric distribution property are subject to the Commission's jurisdiction and ratemaking practices. All such revenues should be treated as other Electric Other Operating Revenue.

8. Today's decision should not authorize PG&E to recover in rates any monetary losses it might incur under the License Agreement. The Commission should decide the appropriate ratemaking treatment of such losses that are subject to the Commission's jurisdiction if and when such losses occur.

9. PG&E should have the burden of demonstrating in future general rate case proceedings (or other appropriate proceedings) that all costs incurred by PG&E under the License Agreement that are subject to the Commission's jurisdiction are reasonable and may be recovered in rates, either directly or as an offset to the revenues that PG&E receives under the agreement.

10. Today's decision should not authorize any construction projects.

11. PG&E and ExteNet should comply with applicable CEQA requirements before constructing facilities pursuant to the License Agreement.

12. ExteNet's authority to construct telecommunications facilities is subject to the conditions adopted by D.06-04-063. These conditions apply to any construction that ExteNet may undertake pursuant to the License Agreement.

13. The Commission's approval of A.15-07-012 is exempt from CEQA because (i) today's decision does not authorize any construction projects, and (ii) any construction projects carried out by ExteNet under the License Agreement will be subject to CEQA review and approval by the Commission in accordance with the procedures adopted by D.06-04-063.

14. There is no need for evidentiary hearings. This changed determination on the need for hearings should be approved in accordance with Rule 7.5.

15. For the reasons stated in Section 8 of today's decision, PG&E has not shown good cause to revere the ALJ rulings issued on November 18, 2015 and January 5, 2016. These rulings are legally sound and correct, and should be affirmed.

16. The following Order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Application 15-07-012 is granted. The *Master IRU Agreement for Optical Fiber Installations Between Pacific Gas and Electric Company and ExteNet Systems (California) LLC* appended to Application 15-07-012 is approved.

2. This order does not authorize any transactions between Pacific Gas and Electric Company and its affiliates that may occur pursuant to the

License Agreement approved by Ordering Paragraph 1. Any such transactions shall comply with applicable statutes and regulations in effect at that time.

3. The License Agreement approved by Ordering Paragraph 1 is subject to the Commission's Right-of-Way Rules adopted by Decision 98-10-058, as modified by subsequent decisions.

4. Pacific Gas and Electric Company's ("PG&E") revenues and expenses associated with ExteNet Systems (California) LLC's use of PG&E's electric transmission property pursuant to the License Agreement approved by Ordering Paragraph 1 shall be subject to the Federal Energy Regulation Commission's jurisdiction and ratemaking practices.

5. Pacific Gas and Electric Company's ("PG&E") revenues and expenses associated with ExteNet Systems (California) LLC's use of PG&E's electric distribution property pursuant to the License Agreement approved by Ordering Paragraph 1 shall be subject to the California Public Utilities Commission's jurisdiction and ratemaking practices. Such revenues shall be treated as Electric Other Operating Revenue.

6. This order does not authorize Pacific Gas and Electric Company to recover in rates any monetary losses that it might incur under the License Agreement approved by Ordering Paragraph 1. The Commission may decide the appropriate ratemaking treatment of such losses that are subject to the Commission's jurisdiction if and when such losses occur.

7. Pacific Gas and Electric Company ("PG&E") shall have the burden of demonstrating in future general rate case proceedings (or other appropriate proceedings) that all unreimbursed costs incurred by PG&E under the License Agreement approved by Ordering Paragraph 1 which are subject to the Commission's jurisdiction are reasonable and may be recovered in rates.

8. This order does not authorize any construction projects. Pacific Gas and Electric Company and ExteNet Systems (California) LLC shall comply with the California Environmental Quality Act, as codified in California Public Resources Code Section 21000 et seq., before undertaking any construction projects pursuant to the License Agreement approved by Ordering Paragraph 1.

9. ExteNet Systems (California) LLC shall comply with Decision (D.) 06-04-063 before undertaking any construction projects pursuant to the License Agreement approved by Ordering Paragraph 1. This order does not provide ExteNet any construction authority beyond what is authorized by D.06-04-063.

10. There is no need for evidentiary hearings in this proceeding.

11. The rulings issued by the assigned Administrative Law Judge on November 18, 2015 and January 5, 2016, are affirmed.

12. Application 15-07-012 is closed.

This order is effective today.